

Federal Retirement Thrift Investment Board

§ 1606.4

§ 1606.2 Purpose.

(a) With the implementation of the TSP's daily valued record keeping system, losses suffered by participants arising out of employing agency errors will be corrected by calculating and posting breakage to an affected participant's account. Breakage will be calculated as described in 5 CFR 1605.2. However, in some cases, an employing agency may have submitted contributions subject to lost earnings before implementation of the daily valued record keeping system, but did not submit the requisite lost earnings record. Therefore, until September 1, 2003, employing agencies may submit separate lost earnings records for makeup and late contributions submitted before implementation of the new record keeping system. All payments posted after implementation of the new record keeping system are covered under 5 CFR part 1605.

(b) After August 31, 2003, the use of lost earning records will be discontinued.

[68 FR 35501, June 13, 2003]

§ 1606.3 General rule.

Except as otherwise provided, employing agencies shall pay to the Thrift Savings Fund any amount, computed by the TSP recordkeeper in a manner consistent with this part 1606, that is required to restore to the TSP account of the participant or participants involved earnings lost as a result of an employing agency error. Where lost earnings are required, the employing agency must, in accordance with this part 1606 and any instructions provided by the Board or the TSP recordkeeper, submit to the TSP recordkeeper all information and certification that is required to enable the TSP recordkeeper to compute the amount of lost earnings payable by the employing agency, and to charge that amount to the appropriate employing agency.

§ 1606.4 Applicability.

(a) *In general.* Except as otherwise provided, the provisions of this part 1606 apply in any case where, due to employing agency error, the Thrift Savings Fund has not invested or had the use of money that would have been

invested in the Thrift Savings Fund had the employing agency error not occurred, or where the money would have been invested in a different investment fund had the error not occurred.

(b) *Back pay awards and other retroactive pay adjustments.* The application of this part 1606, as described in paragraph (a) of this section, includes TSP contributions derived from payments associated with back pay awards or other retroactive pay adjustments that are based on a determination that the employing agency paid a participant less than the full amount of basic pay to which the participant was entitled.

(c) As explained in §1606.2, this part applies to errors that occurred before September 1, 2003.

(d) *De minimis rules.* Notwithstanding paragraphs (a) through (c) of this section or any other provision of this part 1606:

(1) Lost earnings shall not be payable where the amount of money for a source of contributions in a participant's account that is not invested in the Thrift Savings Fund due to an employing agency error, or that is invested in the wrong investment fund due to an employing agency error, is less than one dollar (\$1.00) for that source of contributions. Where the employing agency error caused delayed or erroneous contributions for more than one pay period, this paragraph shall apply separately to each pay period involved.

(2) Where the employing agency error caused delay in submission of TSP payment records or loan allotments, lost earnings shall not be payable unless the belated contributions or loan allotments were received by the TSP recordkeeper more than 30 days after the pay date associated with the pay period for which the contributions or loan allotments would have been submitted had the employing agency error not occurred.

(3) For employing agency errors not covered by paragraph (d)(2) of this section, lost earnings shall not be payable unless, as the result of an employing agency error, money was not invested in the Thrift Savings Fund for a period extending more than 30 days after the date it would have been invested had the error not occurred.

(4) The 30-day requirements contained in paragraphs (d)(2) and (d)(3) of this section do not apply where, due to employing agency error, money in a participant's account has been invested in an incorrect investment fund.

(e) *Contributions for pre-1987 service.* This part does not apply to errors involving employing agency delay in submitting contributions required by 5 U.S.C. 8432(c)(3).

(f) *Contributions for service in January through March 1987.* Notwithstanding any other provision of this section, lost earnings shall be payable with respect to contributions made pursuant to 5 U.S.C. 8432(c)(1) (B) or (C) if the payment records containing those contributions were received by the TSP recordkeeper after April 30, 1987.

[56 FR 606, Jan. 7, 1991, as amended at 68 FR 35501, June 13, 2003]

Subpart B—Lost Earnings Attributable to Delayed or Erroneous Contributions

§ 1606.5 Failure to timely make or deduct TSP contributions when participant received pay.

(a) If a participant receives pay, but as the result of an employing agency error all or any part of the agency automatic (1%) contribution associated with that pay to which the participant is entitled is not timely received by the TSP record keeper, then the makeup or late contributions will be subject to lost earnings. In such cases:

(1) The employing agency must, for each pay period involved, submit to the TSP record keeper a lost earnings record indicating the pay date for which the contributions would have been made had the error not occurred (i.e., the beginning date), the investment fund to which the contributions would have been deposited had the error not occurred if the beginning date on the record was before May 1, 2001, the amount of the contributions, and the pay date for which the contributions were actually made. If the beginning date on the record was on or after May 1, 2001, the TSP record keeper will use the contribution allocation of record for the beginning date and calculate lost earnings;

(2) The TSP record keeper will compute the amount of lost earnings associated with each lost earnings record submitted by the employing agency pursuant to paragraph (a)(1) of this section. In performing the computation, the TSP record keeper will not take into consideration any interfund transfers;

(3) Where the lost earnings computed in accordance with paragraph (a)(2) of this section are positive, the TSP record keeper will charge that amount to the appropriate employing agency and will credit the participant's TSP account. If the lost earnings are negative, the amount computed will be removed from the participant's account and used to offset TSP administrative expenses; and

(4) The lost earnings will be posted to the participant's account based on the contribution allocation in effect on the posting date.

(b) If a participant receives pay from which employee contributions were properly deducted, but as a result of an employing agency error all or any part of the associated agency matching contributions to which the participant is entitled were not timely received by the TSP record keeper, then the makeup agency contributions will be subject to lost earnings. In such cases, the procedures described in paragraphs (a)(1) through (a)(4) of this section will apply to the makeup agency matching contributions.

(c) If a participant receives pay from which employee contributions were properly deducted, but as the result of an employing agency error all or any part of those employee contributions were not timely received by the TSP record keeper, or if the employee contributions were received in connection with a FERCCA correction, the makeup employee contributions will be subject to the procedures described in paragraphs (a)(1) through (a)(4) of this section.

(d) Except for employee contributions received in connection with a FERCCA correction, if a participant receives pay from which employee contributions should have been deducted but, as the result of employing agency